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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-219733 DATE: November 21, 1985  
MATTER OF: Gemma Construction Company, Inc.

## DIGEST:

1. When a bidder takes no exception to the requirements of the solicitation in its bid, acceptance of the bid obligates the bidder to perform in accordance with the terms of the solicitation.
2. Where a bid as submitted does not propose a specific method of performance, the specifications do not require a specific method of performance, and the bid does not otherwise take exception to solicitation requirements, protest challenging rejection of bid as nonresponsive is sustained.

Gemma Construction Company, Inc., protests the rejection of its bid as nonresponsive by the Veterans Administration (VA) under invitation for bids No. 8223-AE. The invitation sought bids for alterations to the VA Medical Center in Northport, New York, and construction of a 10-bed surgical intensive care unit as an addition to the Medical Center. The VA determined Gemma's bid to be nonresponsive because, in its view, Gemma had qualified its bid so that it did not comply with the invitation's required method of excavation for the foundation system. We do not agree with the VA that Gemma's bid was nonresponsive, and, therefore, we sustain the protest.

The solicitation specifications contain in Section 02370, Foundation Caissons,<sup>1/</sup> the following clause:

### "3.2 EXCAVATION:

Excavation and construction methods shall result in minimum disturbance of surrounding material and full lateral support of caissons by surrounding material."

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<sup>1/</sup> A foundation caisson is a shaft of concrete placed under a building column or wall and extending down to hardpan or rock.

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The solicitation further provides in Section 02370:

"1.5 CLASSIFICATION OF EXCAVATION:

"A. Earth Excavation: Consist of any material that can be removed with a heavy-duty auger type drilling machine capable of applying at least a torque to the auger of 40,000 foot pounds in low gear and speed with a pull down of 37,000 pounds."

On June 11, 1985, prior to bid opening, the protester sent the following telegram to the contracting officer:

"The equipment required to perform the work of specification Section 02370, Part 1, Section 1.5, Paragraph A, is not available in this area.

"Therefore, our proposal will be based on alternate methods of earth excavation."

Of the twelve bids opened on June 18, 1985, Gemma's was the third low. The two lower bids were rejected for reasons not germane to this protest.

The protester contends that the specifications are silent as to the specific excavation method to be used to prepare the site for installation of caissons; therefore, failure to use auger type drilling equipment should not render its bid nonresponsive.

The VA states that the specifications call for a specific method to excavate for caissons, i.e., drilling. The VA further states that there are important factors which require the use of the drilling equipment to excavate for caissons. The soil boring reports for the project indicate that the building site contains fill material; in addition, the floor plan at basement level depicts the existing medical facility with its foundation wall well below the level of construction for the addition. In view of this, the VA determined drilling for caissons to be the only reasonable and economical method to construct the 10-bed addition because it will minimize the cost of excavating to reach soil of proper bearing capacity and because it will result in minimal disturbance to the existing surrounding material which will provide full lateral support to the caissons.

According to Gemma, drilling is only one of three methods recognized by the industry for this type of work; the two other methods are driving and vibrating. The

protester alleges that "all of these methods give the caissons the full lateral support from the surrounding material as specified," and, therefore, the construction and excavation methods to be employed on the project "are at the discretion of the contractor." Gemma further contends that the words "auger drill" in paragraph 1.5A are used to define "earth excavation" only and do not require that the drill be used to excavate for caissons. Gemma argues that paragraph 3.2, entitled "Excavation," does not explicitly state how, or with what equipment, excavation of the site should be accomplished. Consequently, the protester takes the position that it is free to use any of the three methods recognized by the industry.

We do agree with the protester that drilling for caissons was not required by the specifications. As we read paragraph 3.2 entitled "Excavation," the contractor would be obligated to excavate the site in a manner which would cause minimum disturbance to surrounding material and which would provide full lateral support of caissons by the surrounding material. This paragraph, however, does not specify the method by which these objectives must be achieved. Moreover, paragraph 1.5 defines earth excavation as consisting of material that can be removed with certain equipment with certain capabilities. It does not require the use of that equipment. Gemma's bid took no exception to these performance requirements and, therefore, Gemma will be obligated to perform the work, if the government accepts its bid, in a manner consistent with the stated objectives of this clause.

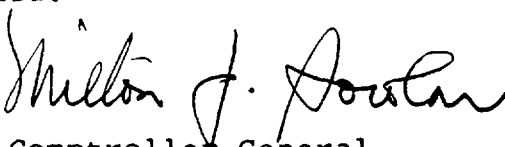
The agency reports that it considered Gemma's bid nonresponsive, because the telegram Gemma sent to the contracting officer several days before bid opening indicated that the bid would be based on an alternate method of excavation. However, the test of responsiveness is whether the bidder has offered to do what is required by the solicitation and not whether a proposed method of performance is satisfactory. See Lapteff Associates, et al., B-196914, et al., Aug. 20, 1980, 80-2 CPD ¶ 135, aff'd on reconsideration, 60 Comp. Gen. 28 (1980), 80-2 CPD ¶ 272. Since, in our view, the specifications did not impose the drilling method, and since Gemma's bid took no exception to any of the solicitation's requirements nor proposed any specific method of performance, Gemma's bid was responsive as submitted--that is, it represented an unqualified offer to meet the VA's needs as described in the solicitation. See Skyline Credit Corp., B-209193, Mar. 15, 1983, 83-1 CPD ¶ 257 at 2.

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Consequently, we conclude that the VA improperly rejected Gemma's bid. We therefore are recommending that the VA award the contract to Gemma, if the contracting officer determines Gemma to be responsible.

The protest is sustained.

*you*   
Comptroller General  
of the United States